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Southern District of New York

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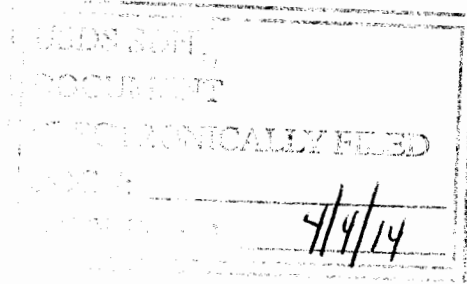
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA *et al.*

*ex rel.* David Kester,

Plaintiffs,

v.

NOVARTIS PHARMACEUTICALS  
CORPORATION *et al.*,

Defendants.  
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x

11 Civ. 8196 (CM)

**ECF Case**

**STIPULATION AND ORDER OF  
SETTLEMENT AND RELEASE  
BETWEEN THE UNITED  
STATES AND THE RELATOR**

WHEREAS, this Stipulation and Order of Settlement and Release (the "Relator Stipulation") is entered into between the United States of America (the "United States"), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and relator David Kester ("Relator" and, together with the United States, the "Parties"), through his counsel;

WHEREAS, on or about November 14, 2011, Relator filed a civil action in the United States District Court for the Southern District of New York, captioned *United States ex rel. Kester v. Novartis Pharmaceuticals Corp. et al.*, 11 Civ. 8196 (CM), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Relator's Action");

WHEREAS, on April 23, 2013, the United States intervened in the action and filed a

complaint-in-intervention against Novartis Pharmaceuticals Corp. (“Novartis”);

WHEREAS, on January 6, 2014, the United States filed an amended complaint-in-intervention (the “Amended US Complaint”) against Novartis and BioScrip, Inc. (“BioScrip”);

WHEREAS, on January 8, 2014, the Court approved a Stipulation and Order of Settlement and Dismissal (the “BioScrip Settlement”) between the United States and BioScrip that resolved, *inter alia*, the United States’s claims against BioScrip in the Amended US Complaint;

WHEREAS, pursuant to the BioScrip Settlement, BioScrip agreed to pay to the United States a settlement of \$11,685,705.43 in principal (the “Settlement Amount”) in three installments of \$2,337,141.00, \$4,674,282.00, and \$4,674,282.43, plus applicable interest accruing from January 8, 2014; *see* BioScrip Settlement at ¶ 3;

WHEREAS, the Relator has asserted that, pursuant to 31 U.S.C. § 3730(d)(1), he is entitled to receive a portion of the Settlement Amount under the BioScrip Settlement (the “Relator Share Claim”); and

WHEREAS, the United States and the Relator mutually desire to reach a full and final compromise of the Relator Share Claim pursuant to the terms set forth below.

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Relator Stipulation, and for good and valuable consideration, receipt of which is hereby acknowledged, the United States and the Relator agree as follows:

1. Contingent upon receipt by the United States of each payment due to the United States under Paragraph 3 of the BioScrip Settlement, the United States will pay Relator, c/o Shelley R. Slade, Esq. as attorney for Relator (“Relator’s Counsel”), twenty percent (20%) of each of the payments from BioScrip in accordance with written instructions provided by Relator’s

Counsel within a reasonable time after the United States's receipt of each such payment.

2. The obligation to make each payment to the Relator under Paragraph 1 is expressly conditioned on, and only arises with, the receipt by the United States of the relevant installment payment from BioScrip required by the BioScrip Settlement. In the event that BioScrip fails to make an installment payment required by the BioScrip Settlement, the United States shall have no obligation to make the corresponding payment to the Relator of the 20% Relator's share for such installment.

3. Relator agrees that this settlement is fair, adequate, and reasonable under all circumstances, and will not challenge the BioScrip Settlement, including but not limited to the Settlement Amount, pursuant to 31 U.S.C. § 3730(c)(2)(B), and expressly waives the opportunity for a hearing on any such objection, pursuant to 31 U.S.C. § 3730(c)(2)(B).

4. In agreeing to accept payment of the Relator's share set forth in Paragraph 1 above, and upon payment thereof, Relator, for himself and his heirs, successors, attorneys, agents and assigns, releases and is deemed to have released and forever discharged the United States, its agencies, officers, employees, servants, and agents from any claims pursuant to 31 U.S.C. § 3730 for a share of the BioScrip Settlement, and from any and all claims against the United States, its agencies, officers, employees, servants, and agents arising from or relating to any claim against BioScrip in the Relator's Action or in the Amended US Complaint.

5. This Relator Stipulation does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims that the Parties may have arising under this Relator Stipulation.

6. This Relator Stipulation shall inure to the benefit of and be binding only on the United States and the Relator, their successors, assigns and heirs.

7. This Relator Stipulation shall become final, binding, and effective only upon entry

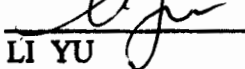
by the Court.

8. This Relator Stipulation constitutes the entire agreement of the United States and the Relator with respect to the subject matter of this settlement stipulation and may not be changed, altered, or modified, except by a written agreement signed by the United States and the Relator specifically referring to this Relator Stipulation.

9. This Relator Stipulation may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

Dated: New York, New York  
March 27, 2014

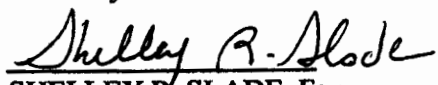
PREET BHARARA  
United States Attorney  
*Attorney for the United States*

By:   
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New York, New York 10007

Dated: March 28, 2014

By:   
David M. Kester, Relator

Dated: March 28, 2014

*Counsel for the Relator*  
By:   
SHELLEY R. SLADE, Esq.  
Vogel, Slade & Goldstein, LLP

SO ORDERED:

  
HON. COLLEEN MCMAHON  
UNITED STATES DISTRICT JUDGE

4/3/2014